

Before the
Federal Communications Commission
Washington, D.C. 20554

RECEIVED

APR 30 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

)

)

Billed Party Preference for
InterLATA 0+ Calls

)

)

CC Docket No. 92-77

**COMMENTS OF CLEARTEL COMMUNICATIONS, INC., OPERATOR SERVICE
COMPANY, AND TELTRUST COMMUNICATIONS SERVICES, INC.**

Pursuant to the Federal Communications Commission's ("Commission") April 15, 1998 public notice, Cleartel Communications, Inc. ("Cleartel"), Operator Service Company ("OSC") and Teltrust Communications Services, Inc. ("Teltrust") (together "Commenters"), by their undersigned counsel, respectfully submit their comments in support of Ameritech's petition for stay of the Commission's January 29, 1998 Order¹ *to the extent the stay applies to all operator service providers* ("OSPs"). The Commission should not stay application of the Order only to intraLATA, interstate services. Rather, the stay should be applied to *all* OSPs for the following reasons. First, in its Joint Petition,² Cleartel, OSC and Teltrust also requested that the Commission stay the effective date of the Order, which the Commission has not addressed. Commenters provided compelling arguments that support its request for a stay of the Order that should not be ignored. Second, singling out and applying the stay to certain operator services will only further aggravate the competitive dilemma faced by many OSPs as a result of the Order. As described below, this serious disparate treatment will further damage certain OSP's ability to stay in the market while maintaining the status quo for other OSPs. Finally, most of the arguments presented by Ameritech

¹ *Billed Party Preference for InterLATA 0+ Calls*, Second Report and Order and Order on Reconsideration, CC Docket No. 92-77, released January 29, 1998 ("Order").

² Joint Petition for Reconsideration of Cleartel Communications Inc., Operator Service Company, and Teltrust Communications Services, Inc., Docket 92-77 (April 9, 1998) ("Joint Petition").

O+Y

are *equally applicable* to Cleartel, OSC, and Teltrust, a point mentioned by Ameritech itself. Therefore, disparate treatment is not warranted.

Commission precedent supports a grant of a stay to all affected OSPs in this current proceeding. As Ameritech pointed out, the Commission has granted a stay in less compelling circumstances. Furthermore, with such serious anti-competitive concerns raised by several petitioners, stay of the Order serves the public interest.

I. INTRODUCTION

On January 29, 1998, the Commission released its Order requiring all OSPs to provide on-demand rate disclosure for all non-access 0+ calls made from public phones or other aggregator locations. In its Order, the Commission adopted an unreasonably short and accelerated compliance date of **July 1, 1998** for network-based OSPs.³ On April 9, 1998, Commenters petitioned the Commission to reconsideration its Order and requested that the Commission apply to *all* OSPs the same compliance date established for store and forward payphone providers (*i.e.*, October 1, 1999) (“Joint Petition”). Commenters also requested a stay of the Order pending a decision on their Joint Petition. Ameritech, on the other hand, filed two separate petitions, one requesting clarification or reconsideration of the Order and the other requesting an emergency stay of the Order (“Emergency Petition”). In its Emergency Petition, Ameritech argued that failure to grant an immediate stay will irreparably harm Ameritech *and potentially other carriers*. For the reasons discussed below and as pointed out by Ameritech, stay of the Order is clearly in the public interest and should be applied to all OSPs.

³ “Network based” OSPs refers to those OSPs that rely on switches to process operator assisted calls. “Store and forward” OSPs refers to OSPs that utilize microprocessor based equipment to handle call processing and billing.

II. COMMENTERS SUPPORT AMERITECH'S PETITION FOR STAY TO THE EXTENT THE STAY APPLIES TO ALL OSPs AFFECTED BY THE ORDER

A. The Evidence Supports Granting A Stay Of The Order For *All* OSPs

Ameritech asserts that its compelling case in support of its requested clarification or reconsideration of the Order is very likely to prevail on the merits and, therefore, stay of the Order to the extent it is applicable to Ameritech's services is warranted. Ameritech also points out in its Emergency Petition that other carriers may have compelling reasons that require stay of the Order.⁴ Commenters believe that they have presented a compelling case in support of their petition for reconsideration of the July 1, 1998 deadline and that, as stated in their Joint Petition, a stay of the Order is equally warranted. Like Ameritech, a stay of application of the Order, which is likely to change in light of the nine petitions filed on April 9, 1998, is necessary for all OSPs to avoid wasted compliance costs and to prevent irreparable harm to themselves and the public.

In their Joint Petition, Commenters provided extensive evidence that the accelerated compliance date is blatantly discriminatory and threatens the ability of network-based OSPs to compete in the marketplace. Due to the accelerated July 1, 1998 compliance date, Commenters will be forced to develop and utilize a costly, inferior method of rate disclosure. The immense increase in cost and associated decrease in revenue caused by implementation of the interim method of compliance will harm Commenters' ability to compete in the marketplace. Furthermore, Commenters' substantial investment in this interim method will preclude them from researching, developing and implementing a more cost effective, automated system in the near future. Without

⁴ For example, Ameritech states that "[t]o the extent the [*Order*] afflicts the interexchange industry, . . . the Commission may need to rethink the application of the [*Order*] altogether. . . . [I]t is obvious that immediate action by the Bureau is essential to avoid irreparable harm to a number of carriers and is very much in the public interest." Ameritech Emergency Petition at fn 5.

a stay of the Order, Commenters will be forced to implement the seriously damaging aspects of the Order, damaging aspects which will likely change as a result of the petitions for reconsideration filed on April 9, 1998. Commenters' undeniable strong case presented in their Joint Petition warrants granting a stay of the Order applicable to all OSPs.

B. Compliance With The Order By Commenters Without Proper Resolution of the Issues Before The Commission Will Cause Irreparable Harm To Commenters

Ameritech argues that it will be irreparably harmed if the Commission does not expeditiously grant the requested stay. Ameritech identifies the various activities that will cause the carrier to expend substantial amounts of money to comply with the Order. Cleartel, OSC, and Teltrust will similarly expend significant financial and technical resources to comply with the Order, an Order which will likely undergo some change as a result of the petitions for reconsideration filed. In their Joint Petition, Cleartel, OSC and Teltrust explained in detail the unreasonable financial burden being placed on them by the expedited compliance date. In fact, some compliance costs have already been expended in preparation for the July 1, 1998 deadline, which is just two months away. These resources may be wasted if the Commission revises its rules in light of the nine petitions filed on April 9, 1998. Commenters urge the Commission to stay the Order until the issues are resolved. Otherwise, carriers, such as Cleartel, OSC, and Teltrust, will be compelled to exhaust substantial resources on an interim method that in the end may not itself be in compliance with the Commission's final rules.

C. The Order Is Anti-Competitive

Commenters agree with Ameritech that the Order will have immense anti-competitive results, but for different reasons. As demonstrated in its Joint Petition, discriminatory treatment will distort

business decisions harming Commenters' ability to compete on a level playing field. For example, the discriminatory regulatory treatment between network-based OSPs and store and forward OSPs creates immense differences in the potential profits and level of consumer satisfaction offered by each type of technology and, therefore, influences Independent Public Payphone ("IPP") providers to use store and forward OSPs rather than network-based OSPs.

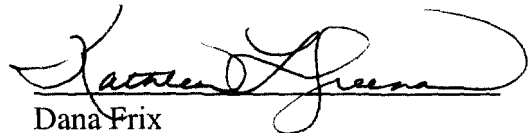
Furthermore, network-based OSPs will, in effect, be penalized for having installed equipment and systems that are cable of providing a rate quote by July 1, 1998. The investment in an inferior, interim compliance method is wasteful and irresponsible. Once sufficient research is conducted, the industry is expected to develop less expensive, more efficient methods of providing on-demand rate disclosure. A network-based OSP that complied with the Commission's unfair, accelerated compliance date will have lost immense amounts of money, own inferior equipment in comparison to its competitor, incurred a negative public image by offering poor quality service, and be unlikely to invest in new, efficient equipment due to a lack of financial resources. Without a stay of the Order, Commenters, in the end, will have implemented the interim method of providing on-demand rate disclosure only to find the Commission revising the rules.

CONCLUSION

Because of the accelerated schedule between now and July 1, 1998, and the enormous costs associated with the interim solutions to the rate disclosure requirement, Cleartel, OSC, and Teltrust respectfully request that pursuant to Section 1.429(k) of the Commission's rules, the Commission stay the effective date of the rule pending a resolution of the issues presented in the petitions filed

on April 9, 1998. Commenters support Ameritech's petition for emergency stay of the Order to the extent that it is applied to all operator service providers.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Kathleen L. Greenan", written over a horizontal line.

Dana Frix
Kathleen L. Greenan
SWIDLER & BERLIN, CHARTERED
3000 K Street, NW
Suite 300
Washington, D.C. 20007

Counsel for Cleartel Communications, Inc., Operator
Service Company and Teltrust Communications
Services, Inc.

April 30, 1998

CERTIFICATE OF SERVICE

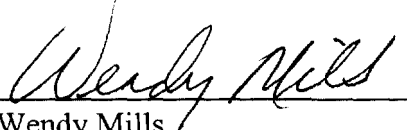
I hereby certify that on this 30th day of April, 1998, a copy of the foregoing *Comments of Cleartel Communications, Inc., Operator Service Company, and Teltrust Communications Services, Inc.*; CC Docket No. 92-77 was hand delivered to:

Office of the Secretary (Original and 4 copies)
Federal Communications Commission
Room 222
1919 M Street, NW
Washington, DC 20554

Chief, Enforcement Division (2 copies)
Common Carrier Bureau
Federal Communications Commission
Stop 1600 A, Room 6008
2025 M Street, N.W.
Washington, D.C. 20554

International Transcription Services (1 copy)
1231 - 20th Street, N.W.
Washington, D.C. 20036

Gary L. Phillips
Counsel for Ameritech
Suite 1020
1401 H Street, NW
Washington, DC 20005


Wendy Mills